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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/297,798 | 04/11/2002 | Sven Gunnar Olsson | SG 99127 | 1268 |

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EXAMINER

SIEFKE, SAMUEL P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| | 1743 |

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | | | |
|-----------------|-----------------|--------------|---------------|
| Application No. | 09/297,798 | Applicant(s) | OLSSON ET AL. |
| Examiner | Samuel P Siefke | Art Unit | 1743 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on election 6/9/03.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) 20-23 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) 13-19 is/are objected to.

8) Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Election/Restrictions

Claims 20-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 15.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Albarda (USPN 4,314,564).

Albarda discloses an apparatus for determining alcohol concentration in the blood. The apparatus comprises measuring the concentration of a first substance and the concentration of water vapor in the exhalation air then establishing a relationship or correlation between the two concentrations using a device which defines a space for receiving exhalation air under free exhalation in a space which has two mutually

opposite openings through which the space communicates with the surrounding air (fig. 1, ref. 1, 42, 40,41; col. 3, lines 46-66); and means for quantitative detection of the substance in the air (col. 3, lines 55-68); means provided for supplying an air flow through one opening opposite of the entry for exhalation air (fig. 1 ref. 40 and 41; col. 15-21).

Claims 1, 3-9,11,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Nawata et al. (USPN 5,531,225).

Nawata discloses an apparatus for measuring a component contained in a person's exhalation air that comprises the steps of measuring the concentration of a first substance and the concentration of water vapor in the exhalation air then establishing a relationship or correlation between the two concentrations (fig. 18, 19; col. 4, lines 64-col. 5 line 4; col. 8, lines 1-4; col. 10, lines 29-67; col. 11, lines 51-col. 12, line 9; wherein the exhalation air is exhaled freely in a defined air volume having a predetermined composition (col. 7, lines 31-46; col. 11, line 51-col. 12, line 9); and the concentrations of the substance and water vapor are measured from this defined air (col. 8, lines 1-4; col. 10, lines 29-67; col. 11, lines 51-col. 12, line 9; col. 13, lines 34-67); the air in said defined space is dry (surrounding air, col. 5, lines 36-40); the air flow is passed constant or intermittent through a defined flow passage (col. 5, line 29-col. 6, line 23); the exhalation air is directed as an air jet towards and into the flow passage (col. 7, lines 41-46; col. 10, lines 29-37); the exhalation air and the surrounding air is

supplied to the flow passage together (col. 10, lines 29-32); the flow passage is kept heated (col. 5, lines 51-65; col. 6, lines 18-34).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nawata et al. (USPN 5,531,225) in view of Forrester et al. (USPN 5,376,555).

Nawata discloses an apparatus for measuring a component contained in a person's exhalation air.

Nawata does not disclose any information regarding measuring the concentration of carbon dioxide.

Forrester teaches that carbon dioxide and alcohol have known relationships for predicting each concentration (abstract). Therefore it would have been obvious to one

having an ordinary skill in the art to modify Nawata to include carbon dioxide detection in order to give a secondary correlation to the concentration of alcohol in the blood.

Allowable Subject Matter

Claims 13-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 13 would be allowable because the prior art does not teach or fairly suggest the use of a tube having opposite openings, one end for receiving an exhalation air flow and the other for exiting the air, the tube being mounted coaxially in a cuvette which is open at one end; the exiting end of the tube being located axially inwardly of the open end of the cuvette; and an annular gap for supplying air to the gap which communicates with the exiting end of the tube.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers

for the organization where this application or proceeding is assigned are 703-872-9311 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


SPS
June 17, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700